

SECTION 362 INFORMATION COVER SHEETDEBTOR: Richard Esguerra CanaveralBANKRUPTCY NO. 18-15672-abl

MOTION #: _____

MOVANT: Nationstar Mortgage LLC d/b/a Mr. CooperCHAPTER: 7Certification of Attempt to Resolve the Matter Without Court Action:

Moving counsel hereby certifies that pursuant to the requirement of LR 4001(a)(2), the subject property has been identified as being surrendered in the plan and/or schedules, or an attempt has been made to resolve the matter without court action, but movant has been unable to do so.

Date: 10/3/2018

Signature: /s/ Michael Chen, Esq. Attorney for MovantPROPERTY INVOLVED IN THIS MOTION: 4009 Coleman Street, North Las Vegas, NV 89032

NOTICE SERVED ON: Debtor: Richard Esguerra Canaveral; Debtor's counsel, Erik C. Severino; Trustee, Lenard E. Schwartzer.

DATE OF SERVICE:

<u>MOVING PARTY'S CONTENTIONS:</u>			<u>DEBTOR'S CONTENTIONS:</u>	
The EXTENT and PRIORITY OF LIENS:			The EXTENT and PRIORITY OF LIENS:	
1 st Nationstar Mortgage LLC d/b/a Mr. Cooper	\$	301,831.96	1 st	
2 nd	\$		2 nd	
3 rd	\$		3 rd	
4 th	\$		Other	
Total Encumbrances:	\$	301,831.96	Total Encumbrances:	
APPRAISAL or OPINION as to VALUE:	\$	315,000.00	APPRAISAL or OPINION as to VALUE:	
<u>TERMS OF MOVANT'S CONTRACT</u> <u>with the DEBTOR</u>			<u>OFFER OF "ADEQUATE</u> <u>PROTECTION" for MOVANT:</u>	
Amount of Note: \$278,640.00 Interest Rate: 4.25% Duration: 30 Years Payment per month: \$1,415.43 Date of Default : 02/01/18 Amount of Arrears: \$13,120.33 Recording NOD: 06/27/2018 NOS: SPECIAL CIRCUMSTANCES: There is no equity in the property for the debtor.			SPECIAL CIRCUMSTANCES:	
Submitted by: Michael Chen			Submitted by:	
Signature: <u>/s/ Michael Chen</u>			Signature:	

INSTRUCTIONS
for Section 362 Cover Sheet

To expedite the hearing of Section 362 motions for relief from the automatic stay, the moving party shall complete and file with the motion a copy of this Cover Sheet. The Cover Sheet requires a statement of the nature and extent of the liens on the Debtor's property at issue. The movant must show at least the status of the issue. The movant must show at least the status of the movant's lien and any senior liens. At the Court's discretion, the motion may be denied if this exhibit has not been completed and filed, unless the information is not applicable (such as for motions to lift stay to allow pending litigation to proceed).

This Cover Sheet shall be attached to the front of the motion and a copy served on the debtor. The debtor shall indicate disagreement on the right of the Cover Sheet. The debtor shall file the completed Cover Sheet to the Debtor's formal response or opposition to the motion.

Special circumstances that would compel the granting or denial of the requested relief shall be set forth briefly on the bottom of this Cover Sheet and shall be explained more fully in the motion or response.

NOTICING REQUIREMENTS

The Court will not hear motions not properly noticed. Unless the Court otherwise orders, twenty-eight (28) days notice of all motions for relief from the automatic stay must be served on the Debtor, the Debtor's attorney and, where applicable, the Chapter 7 trustee, the Chapter 13 standing trustee, or the Chapter 11 trustee. See Bankruptcy Rules 4001, 9014, and 7004, and the Local Rules of Practice for the District of Nevada, LR 4001, and LR 9013.

Kristin A. Schuler-Hintz, Esq., SBN 7171
Michael Chen, Esq., SBN 7307
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Phone (702) 685-0329
Fax (866) 339-5691
NVBK@McCarthyHolthus.com

E-filed: 10/3/2018

Attorney for Secured Creditor, Nationstar Mortgage LLC d/b/a Mr. Cooper, its assignees and/or successors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:) Case No. 18-15672-ABL
)
Richard Esguerra Canaveral,) Chapter 7
)
Debtor.) **NATIONSTAR MORTGAGE LLC D/B/A**
) **MR. COOPER'S MOTION FOR RELIEF**
) **FROM AUTOMATIC STAY AND**
) **ABANDONMENT**
)
)
) HEARING:
) DATE: 11/7/2018
) TIME: 10:30am
) CTRM: 1
PLACE: 300 Las Vegas Boulevard South, Las Vegas, NV 89101

Nationstar Mortgage LLC d/b/a Mr. Cooper, its assignees and/or successors in interest ("Secured Creditor" herein), moves this Court for an Order Terminating the Automatic Stay of 11 U.S.C. § 362 as to moving party (and the Trustee under the Deed of Trust securing moving party's claim) so that moving party and its Trustee may, enforce its rights under applicable state law, or at its election, seek to modify the loan, relative to the Note and Deed of Trust secured by the Debtor's property, commonly known as 4009 Coleman Street, North Las

Vegas, NV 89032 ("Property" herein). Further, Secured Creditor moves this Court for an Order for Abandonment pursuant to 11 U.S.C. § 554(b) and Bankruptcy Rule 6007(b).

Attached are redacted copies of any documents that support the claim, such as promissory notes, purchase order, invoices, itemized statements of running accounts, contracts, judgments, mortgages, and security agreements in support of right to seek a lift of the automatic stay and foreclosure if necessary., as outlined in more details herein.

Secured Creditor is the holder of a Promissory Note dated 03/07/2008, in the principal amount of \$278,640.00, which is secured by the Deed of Trust of the same date. **See Exhibit "1"**. A true and correct copy of the Note is attached hereto as **Exhibit "3"**. Movant, directly or through an agent, has possession of the Note. Movant is an entity entitled to enforce the Note.

A true and correct copy of the assignment of deed of trust is attached hereto as **Exhibit "2"**.

The current market value of the Debtor's subject Property is \$315,000.00, based upon the Debtor's own value as set forth in Schedule A. **See Exhibit "5"**.

Based upon Secured Creditor's past practices, it is expected that the cost of sale of the property will be at least eight to ten percent of the value of the property. In the present case, the Debtor has no equity in the Property, as evidenced by the approximate market value compared to the total liens against the Property, principally that of Secured Creditor herein and the other liens as noted in this Motion.

Value	\$	315,000.00
Total Liens to Secured Creditor	\$	301,831.96
Less 8% Cost of Sale	\$	25,200.00
Equity	\$	(12,031.96)

Based on the foregoing, Secured Creditor alleges that there is no equity in the subject property, the subject property is not necessary for an effective reorganization, and Secured Creditor is not adequately protected.

Secured Creditor is not receiving regular monthly payments, and is unfairly delayed from proceeding with the foreclosure of the subject Property. The Debtor is in substantial

default with post-petition payments. Accordingly, relief from the automatic stay should be granted to Secured Creditor pursuant to 11 U.S.C. § 362(d)(1) and (2).

The Debtor filed this subject bankruptcy petition on 09/21/2018.

The Obligations have been modified pursuant to a loan modification, a true and correct copy of which is attached hereto as **Exhibit "4"**.

Pursuant to the terms of the Deed of Trust, a payment received is applied to the account and credited to the next due payment. For example, a payment received in December will be applied to the November payment if no payment had been received in November.

With respect to Secured Creditor's Deed of Trust, the following is now due:

Total Due

Unpaid Principal Balance:	\$	224,632.60
Accrued Interest as of 09/26/2018:	\$	7,018.45
Deferred Principal Balance:	\$	65,173.57
Escrow Advances as of 09/26/2018:	\$	3,210.45

DELINQUENCIES

Monthly Payments:	8	at	\$1,415.43	\$	11,323.44
(02/01/18 through 09/01/18)					
Non-Escrow Advances:				\$	865.89
Bankruptcy Attorney Fee:				\$	750.00
Bankruptcy Filing Fee:				\$	181.00
Total Delinquencies:				\$	13,120.33

Total Due to Secured Creditor:	\$	301,831.96
---------------------------------------	----	-------------------

The next scheduled monthly payment of \$1,415.43 is due 10/01/2018, and continuing each month thereafter. However, this amount may be subject to change pursuant to the terms of the applicable loan documents. Late charges will accrue if payment is not received by the 15 of the month.

Secured Creditor recorded a Notice of Default to foreclose on the Property on 06/27/2018. The trustee sale and foreclosure have since been stayed as a result of the subject bankruptcy case.

1 In accordance with Local Rule 4001(a)(2), on 09/26/2018, Secured Creditor sent a Meet
 2 and Confer letter to the parties of interest herein in an attempt to communicate in good faith
 3 regarding resolution of the instant motion. To date, Secured Creditor has been unable to resolve
 4 this matter and as a result, brings this motion. See **Exhibit “6”**.

5 **ORDER COMPELLING THE TRUSTEE TO ABANDON THE PROPERTY IS**
 6 **APPROPRIATE PURSUANT TO 11 U.S.C. § 554(b)**

7 Pursuant to 11 U.S.C § 554(b) and Bankruptcy Rule 6007(b), the court may, on request
 8 of a party in interest and after notice and a hearing, order the trustee to abandon any property of
 9 the bankruptcy estate that is burdensome or of inconsequential value and benefit to the estate.
 10 The party seeking abandonment bears the burden of proving the property is either burdensome or
 11 of inconsequential benefit and value to the estate. In re Alexander, 289 B.R. 711, 715 (B.A.P. 8th
 12 Cir. 2003). The bankruptcy court has the discretion to determine whether the factual predicates
 13 for abandonment are present. In re Nelson, 251 B.R. 857, 859 (B.A.P. 8th Cir. 2000).
 14 Bankruptcy courts have found that abandonment is appropriate in circumstances where there is
 15 no concrete evidence of value to the bankruptcy estate. See Id. at 861. Further, the bankruptcy
 16 court may order abandonment in a bankruptcy proceeding that involves issues other than
 17 abandonment, such as automatic stay litigation. Catalano v. C.I.R., 279 F.3d 682, 687 (9th Cir.
 18 2002).

19 Here, since the subject property has no equity, it is accordingly burdensome to, and/or is
 20 of inconsequential value and benefit to, the estate. Thus, an Order directing that the Trustee
 21 abandon the subject property is appropriate in accordance with 11 U.S.C. § 554(b).

22 WHEREFORE, Secured Creditor prays for judgment as follows:

- 23 1. For an Order granting relief from the automatic stay, permitting Secured Creditor to
 24 pursue their rights under applicable State and Federal Law to recover the property or
 25 to modify the loan.
- 26 2. For an Order directing that the Trustee abandon the subject property, as the subject
 27 property has no equity and thus, is burdensome to, and/or is of inconsequential value
 28 and benefit to, the estate pursuant to 11 U.S.C § 554(b).

3. For an Order granting relief from the automatic stay, permitting Secured Creditor to proceed with loss mitigation including but not limited to Deed in Lieu, short sales, loan modifications or any other loan work out as allowed by state law and/or proceed with the foreclosure under Secured Creditor's Deed of Trust, and to sell the subject Property at sale pursuant to applicable state law, under the terms of the Deed of Trust to proceed with any and all post foreclosure sale remedies, including the unlawful detainer action or any other action necessary to obtain possession of the Property.
4. For an Order for the immediate pre-confirmation distribution and accounting of any funds being held as adequate protection for Secured Creditor.
5. For an Order that the 14-day stay described by Bankruptcy Rule 4001(a)(3) be waived.
6. For an Order modifying the automatic stay to protect Secured Creditor's interest, as the Court deems proper.
7. For attorneys' fees and costs incurred herein.
8. For such other relief as the Court deems proper.

Dated: October 3, 2018

McCarthy & Holthus, LLP

By: /s/ Michael Chen
Michael Chen, Esq.
Kristin A. Schuler-Hintz, Esq.
Attorney for Secured Creditor
Nationstar Mortgage LLC d/b/a Mr. Cooper, its
assignees and/or successors

Kristin A. Schuler-Hintz, Esq., Nevada SBN 7171
Michael Chen, Esq., Nevada SBN 7307
McCarthy & Holthus, LLP
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Phone (702) 685-0329
Fax (866) 339-5691
NVBK@McCarthyHolthus.com

Attorney for: Secured Creditor, Nationstar Mortgage LLC d/b/a Mr. Cooper, its assignees and/or successors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	) Case No.: 18-15672-abl
)
Richard Esguerra Canaveral,	) Chapter 7
)
Debtor.	) DATE: 11/7/2018
	) TIME: 10:30am
)
	) ORDER TERMINATING
	) AUTOMATIC STAY AND
	) ABANDONMENT

The Motion for Relief From Automatic Stay and Abandonment came on regularly for hearing at the date and time set forth above before the United States Bankruptcy Court. Upon

1 review of the Motion and supporting evidence, and good cause appearing, the Court rules as
2 follows:

3 IT IS HEREBY ORDERED, ADJUDGED AND DECREED that the automatic stay
4 provisions of 11 U.S.C. §362 be and are hereby terminated with respect to the interests of
5 Movant in the real property commonly known as 4009 Coleman Street, North Las Vegas, NV
6 89032.

7 IT IS FURTHER ORDERED that pursuant to 11 U.S.C. § 554(b) and Bankruptcy Rule
8 6007(b), the Trustee shall abandon the subject property from the bankruptcy estate, as there is
9 no equity in the subject property and thus, is burdensome to, and/or is of inconsequential value
10 and benefit to, the bankruptcy estate.

11
12 IT IS SO ORDERED.

13
14 Submitted by:
15 McCarthy & Holthus, LLP

16
17 _____
18 Michael Chen, Esq.
19 Kristin A. Schuler-Hintz, Esq.
20 9510 West Sahara Avenue, Suite 200
21 Las Vegas, NV 89117
22 (702) 685-0329

23 Approved/Disapproved

24 _____
25 Erik C. Severino, Esq.
26 7251 W. Lake Mead Blvd, ste 300
27 Las Vegas, NV 89128
28 (702) 370-0155

29 Approved/Disapproved

30 _____
31 Lenard E. Schwartz
32 2850 S. Jones Blvd, #1
33 Las Vegas, NV 89146

ALTERNATIVE METHOD re: RULE 9021:

In accordance with LR 9021, counsel submitting this document certifies that the order accurately reflects the court's ruling and that (check one):

☐ The court has waived the requirement set forth in LR 9021(b)(1).

☐ No party appeared at the hearing or filed an objection to the motion.

☐ I have delivered a copy of this proposed order to all counsel who appeared at the hearing, and each has approved or disapproved the order, or failed to respond, as indicated below [list each party and whether the party has approved, disapproved, or failed to respond to the document]:

Counsel appearing: Erik C. Severino

Unrepresented parties appearing: None

Trustee: No Appearance at Hearing; No additional Service required.

☐ I certify that this is a case under Chapter 7 or 13, that I have served a copy of this order with the motion pursuant to LR 9014(g), and that no party has objected to the form or content of the order.

Submitted by:
McCarthy & Holthus, LLP

/s/ Michael Chen.
Michael Chen, Esq.
Kristin A. Schuler-Hintz, Esq.

###

Kristin A. Schuler-Hintz, Esq., NV SBN 7171
Michael Chen, Esq., NV SBN 7307
McCarthy & Holthus, LLP
9510 West Sahara Avenue, Suite 200
Las Vegas, NV 89117
Phone (702) 685-0329
Fax (866) 339-5691
NVBK@McCarthyHolthus.com

Attorney for: Secured Creditor, Nationstar Mortgage LLC d/b/a Mr. Cooper, its assignees and/or successors

UNITED STATES BANKRUPTCY COURT
DISTRICT OF NEVADA

In re:	) Case No.: 18-15672-abl
)
Richard Esguerra Canaveral,	) Chapter 7
)
Debtor.	) DATE: 11/7/2018
	) TIME: 10:30am
)
	) CERTIFICATE OF SERVICE OF
	) <i>PROPOSED ORDER TERMINATING</i>
	) AUTOMATIC STAY AND
	) ABANDONMENT

On 10/3/2018, I served the foregoing documents described as ***PROPOSED ORDER TERMINATING AUTOMATIC STAY AND ABANDONMENT*** on the following individuals by electronic means through the Court's ECF program:

COUNSEL FOR DEBTOR
Erik C. Severino
erik@mylasvegaslawyers.com

TRUSTEE
Lenard E. Schwartzer
trustee@s-mlaw.com

1 I declare under penalty of perjury under the laws of the United States of America that the foregoing
2 is true and correct.

3 /s/ Salvador Arroyo

4 Salvador Arroyo

5
6 On 10/3/2018, I served the foregoing documents described as **PROPOSED ORDER**
7 **TERMINATING AUTOMATIC STAY AND ABANDONMENT** on the following
8 individuals by depositing true copies thereof in the United States first class mail at San Diego,
9 California, enclosed in a sealed envelope, with postage paid, addressed as follows:

10 DEBTOR

11 Richard Esguerra Canaveral
12 4009 Coleman St.
North Las Vegas, NV 89032-1439

13 SPECIAL NOTICE

14 Barclays Bank Delaware
15 Attn: Management Agent
P.O. BOX 8803
16 Wilmington, DE 19899

17 Smoke Ranch Surgery Center

18 Attn: Managing Agent
7180 Smoke Ranch Rd.
19 Las Vegas, NV 89128-8395

20 Merrick Bank Corp

21 Attn: Managing Agent
Po Box 9201
22 Old Bethpage, NY 11804

23 Ccs/first National Ban

24 Attn: Managing Agent
500 East 60th St North
25 Sioux Falls, SD 57104-0478

26 (p)CAPITAL ONE

27 Attn: Managing Agent
PO BOX 30285
28 SALT LAKE CITY, UT 84130-0285
29

1 Cap1/mitsu
2 Attn: Managing Agent
3 90 Christiana Road
4 New Castle, DE 19720-3118

5 First Premier Bank
6 Attn: Managing Agent
7 601 S Minnesota Ave
8 Sioux Falls, SD 57104-4868

9 AIS Portfolio Services, LP
10 Attn: Managing Agent
11 Capital One Auto Finance, a division of Capital One, N.A. Department
12 4515 N Santa Fe Ave. Dept. APS
13 Oklahoma City, OK 73118

14 Capital One Auto Finance
15 Attn: Managing Agent
16 3901 Dallas Parkway
17 Plano, TX 75093

18 Synch/car Care Disc Ti
19 Attn: Managing Agent
20 Po Box 965036
21 Orlando, FL 32896

22 Dolr Ln Cent
23 Attn: Managing Agent
24 6122 W Sahara Ave
25 Las Vegas, NV 89146-3051

26 Affirm Inc
27 Attn: Managing Agent
28 650 California St Fl 12
29 San Francisco, CA 94108-2716

Credit One Bank Na
Attn: Managing Agent
Po Box 98875
Las Vegas, NV 89193-8875

Capital One Bank (USA) NA
Attn: Managing Agent
c/o Patenaude & Felix APC
7271 W Charleston Blvd #100
Las Vegas, NV 89117-1686

1
2 Midland Funding
3 Attn: Managing Agent
4 2365 Northside Drive 30
5 San Diego, CA 92108-2709

6 Comenitybank/victoria
7 Attn: Managing Agent
8 Po Box 182789
9 Columbus, OH 43218-2789

10 Synch/sams Club Dc
11 Attn: Managing Agent
12 Po Box 965005
13 Orlando, FL 32896-5005

14 Collins Asset Group
15 Attn: Managing Agent
16 5725 W Highway 290 Ste 1
17 Austin, TX 78735-8722

18 Discover Fin Svcs Llc
19 Attn: Managing Agent
20 Po Box 15316
21 Wilmington, DE 19850-5316

22 Credit Control, LLC
23 Attn: Managing Agent
24 5757 Phantom Dr., Ste. 330
25 Hazelwood, MO 63042-2429

26 IRS
27 Attn: Managing Agent
28 CENTRALIZED INSOLVENCY OPERATION
29 PO BOX 7346
Philadelphia, PA 19101-7346

Cc Coll Svc
Attn: Managing Agent
8860 W Sunset
Las Vegas, NV 89148-4898

Lending Club Corp
Attn: Managing Agent
71 Stevenson St Ste 300
San Francisco, CA 94105

1
2 Collins Asset Group, LLC
3 Attn: Managing Agent
4 5725 W. Highway 290, Ste. #103
5 Austin, TX 78735-8722

6 Hyundai Capital America
7 Attn: Managing Agent
8 4000 Macarthur Blvd Ste
9 Newport Beach, CA 92660-2558

10 Loandepo.co
11 Attn: Managing Agent
12 Po Box 77404
13 Ewing, NJ 08628-6404

14 Syncb/Jcp
15 Attn: Managing Agent
16 Po Box 965007
17 Orlando, FL 32896

18 Synchrony Bank
19 Attn: Managing Agent
20 c/o PRA Receivables Management, LLC
21 PO Box 41021
22 Norfolk, VA 23541

23 Amex
24 Attn: Managing Agent
25 Po Box 297871
26 Fort Lauderdale, FL 33329-7871

27 Resurgent Capital Services
28 Attn: Managing Agent
29 PO Box 10525
Greenville, SC 29603-0525

Kay Jewelers/genesis
Attn: Managing Agent
15220 Nw Greenbrier, Ste
Beaverton, OR 97006-5744

Nationstar/mr Cooper
Attn: Managing Agent
350 Highland
Houston, TX 77009-6623

Rc Willey Home Furn
Attn: Managing Agent
2301 S 300 W
Salt Lake City, UT 84115-2516

I declare under penalty of perjury under the laws of the United States of America that the foregoing is true and correct.

/s/ Hue Banh

Hue Banh